

FIREMAN'S FUND INSURANCE COMPANY

**777 San Marin Drive
Novato, CA 94998-1000**

NAIC COMPANY 21873

MARKET CONDUCT EXAMINATION REPORT

as of December 31, 2003

**COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**PREPARED BY INDEPENDENT CONTRACTORS FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**Fireman's Fund Insurance Company
777 San Marin Drive
Novato, CA 94998-1000**

**MARKET CONDUCT
EXAMINATION REPORT
as of
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Prepared by

Gary L. Domer, CIE

James H. Daughan, CIE

Independent Contract Examiner

October 7, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., an examination of selected, claims, underwriting and rating practices of the Fireman's Fund Insurance Company's private passenger automobile and homeowners business has been conducted. The Company's records were examined at the Regional Office located at 9444 Balboa Ave San Diego, CA 92123-1696 and the St. Louis Claims Service Center, 3301 South Rider Trail, Earth City, MO, 63045. The examination covered a one-year period from January 1, 2003, to December 31, 2003.

A report of the examination of the Fireman's Fund Insurance Company is, herewith, respectfully submitted.

Gary L. Domer, CIE

James H. Daughan, CIE

Independent Market Conduct Examiner

**MARKET CONDUCT
EXAMINATION REPORT
OF
Fireman's Fund Insurance Company**

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COMPANY PROFILE**FIREMAN'S FUND INSURANCE COMPANY**

Fireman's Fund Insurance Company was incorporated under the laws of the State of California on May 6, 1863 and began business on June 18, 1863. As of October 31, 1968, the AMEX HOLDING CORPORATION, a wholly-owned subsidiary of AMERICAN EXPRESS COMPANY purchased all the outstanding shares of The Fund American Companies, thereby assuming control of all the companies of the FFIC Group. On January 2, 1991 the company was sold to Allianz of America, Inc., a subsidiary of Allianz Aktiengesellschaft Holding.

The Company was licensed to do business in Colorado on March 20, 1918. It is licensed in all states, Puerto Rico, Virgin Islands and DC

As of December 31, 2003, Fireman's Fund had 1,315* Private Passenger Automobile and 1,262* Homeowners policies in force in Colorado. Additionally, Fireman's Fund reported \$3,451,000** in private passenger automobile and \$2,856,000** Homeowners written premium in Colorado as of December 31, 2003. This represented a .12%** market share of all private passenger automobile insurance and a .29%** of all homeowners insurance written in Colorado.

*Data as reported by the Company

**Data as reported in the Colorado Insurance Industry Statistical report

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to private passenger automobile and homeowners insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report

The examination was governed by, and was performed in accordance with procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered twelve months of the Company's operations, from January 1, 2003, to December 31, 2003.

File sampling was based on a review of claims, underwriting and rating files systematically selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action.

The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses Private Passenger Automobile and Homeowner issues and contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following four (4) Company operations:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting and Rating
4. Claims

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's underwriting and rating practices for homeowner and private passenger automobile insurance to determine compliance with the Colorado insurance law.

Exhibit 1, Homeowner

Law	Subject
Section 10-1-128	Fraudulent Insurance Acts
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-4-110.7	Cancellation, Nonrenewal
Section 10-4-111	Disclosure Forms
Section 10-4-112	Property Damage
Section 10-4-114	Hazard Insurance
Regulation 1-1-7	Market Conduct Record Retention
Regulation 5-1-2	Application and Binder Forms
Regulation 5-1-10	Rate and rule filing regulation
Regulation 5-1-16	Limitations on the use of Credit Information or Insurance Scoring

Exhibit 2, Private Passenger Auto

Law	Subject
Section 10-1-205	Financial Examination Reports
Section 10-1-203	Authority, scope, and scheduling of examinations
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practice prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-3-1106	Power of Commissioner
Section 10-3-1107	Hearings
Section 10-3-1108	Orders
Section 10-3-1109	Penalty for violation of cease and desist orders
Section 10-4-401	Purpose-applicability
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618	Unfair or discriminatory trade practices-legislative declaration
Section 10-4-619	Coverage compulsory
Section 10-4-620	Required Coverage
Section 10-4-621	Required Coverages are minimum
Section 10-4-622	Required provision for intrastate and interstate operation
Section 10-4-623	Conditions and exclusions
Section 10-4-624	Self-insurers
Section 10-4-625	Quarterly premium payments
Section 10-4-626	Prohibited reasons for non-renewal or refusal to write a policy

Section 10-4-627	Discriminatory standards-premiums-surcharges-proof of financial resp.
Section 10-4-628	Refusal to write-changes in-cancellation-non-renewal of policies
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-631	Insurers to file rate schedule
Section 10-4-632	Reduction in rates for drivers 55 years or older/drivers ed course
Section 10-4-633	Certification of policy and notice forms
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of autom insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.
Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Regulation 1-1-6	Certification of forms
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8.	Penalties And Timelines Concerning Division Inquires and Document Requests
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Ins. Scoring.
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations.
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 5-2-12	Concerning Automobile Consumer Protections
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.

Company Operations and Management

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, forms certification, and timely cooperation with the examination process.

Complaints

The examiners reviewed and compared the complaint log maintained by the Division of Insurance against the Company's complaint log to verify the accuracy of the Company's tracking system. The examiners also evaluated the Company's complaint handling methodology and reviewed the reason for and disposition of complaints.

Contract Forms and Endorsements

The following Homeowners forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance.

Title	Form	Edition Date
Prestige Home Standard	5249	11-02
Prestige Home Premier	5250	11-02
Policy Conditions	5311	4-02
Earthquake-Exterior Masonry Veneer Not Covered	120104	4-02
Earthquake-Office, School, Studio at the Residence Premesis	120105	4-02
Loss Assessment Coverage-Increased Limits	125265	4-02
Contingent Workers' Comp	125268	4-02
Endorsement CO	125420	4-02
Earthquake	125423	4-02
Earthquake-Masonry Veneer Not Covered, Prestige	125435	4-02
Incidental Farming Personal Liability-Residence Premesis	124438	4-02
No Coverage for Personal Injury Losses	125495	4-02
No Coverage Liability and Med Pay	125495	4-02R
No Cost for Full Cost Replacement Coverage Dwelling	125496	4-02
Dwelling	125500	4-02
Business at Home	125543	4-02
Water Back Up and Sump Pump Overflow	125544	4-02
Incidental Business Liability	125572	4-02
1% Wind and Hail Deductible	125594	4-02
2% Wind and Hail Deductible	125595	4-02
Residence Held in Trust	125596	1-03
Additional Insured Endorsement-CO	125599	4-02
Prestige Home Premier with Measure	125781	1-03
Structures rented to others	125808	4-02
Additional Insured – Residence premises	125809	4-02
Other Structures –Increased Limits	125810	4-02
Increased Limits Personal Property not at the Residence Premises	125811	4-02
Credit Card, Fund Transfer, Forgery Coverage	125812	4-02
Personal Property Increased Special Limits of Liability	124814	4-02
Other Structures-Off Premises	125815	4-02
Specific Structures Away from Premises	125816	4-02
Care Business	125818	4-02

Additional Business Rented to Others	125838	4-02
Business Pursuits	125839	4-02
Permitted Incidental Occupancies	125847	4-02
Business Property-Increased Limits	125855	4-02
Loss Assessment Coverage	125868	4-02
Permitted Incidental Occupancies	125857	4-02
Increased Special Limits of Insurance	125859	4-02
Residence Rental Theft	125861	4-02
Additional Interests	125871	4-02
Premises Alarm or fire Protection	125872	4-02
Building Additions and Alterations	125873	4-02
Special Provisions – Colorado	125883	4-02
Special Computer Coverage	180220	4-02
Home Renovation and Vacancy Notice Requirements	335818	4-02
PHM Changes to your Policy	335875CO	
About your Policy	335889	4-02
Property Losses Not Covered-Pathogenic or Poisonous Agents	125908	6-03
Hail Resistant Roof Premium Credit	125494	3-95
Identity Fraud Expense Coverage	125902	3-03
Trees- Debris Removal Increased Limit	125469	12-92
Workers Comp/Residence Employees Endorsement	WC000314	4-84R
Premier Customer Letter	301153	11-02
Prestige Home Premier Renewal Letter	301154P	6-03
Prestige Home Standard Renewal Letter	301159P	6-03

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance.

Title	Form	Edition Date
Insurance ID Card	AC 50	1/83
Colorado Auto Supplement	Acord 61 CO	2/97
Colorado Fraud Statement	Acord 63 CO	1/97
Colorado Personal Auto App	Acord 90	1/99
SR-26 Financial Resp. Notice of Cancellation	R1307W	6-71
Personal Auto Policy	PP00 01	6-98
Amendment CO	PP02 01	8-86
Suspension of Insurance	PP 02 01	8-86
Reinstatement of Insurance	PP02 02	8-86
Fed Employees using autos in Government Business	PP03 01	8-86
Optional limits transportation Expenses Coverage	PP03 02	6-98

Towing and Labor Cost Coverage	PP03 03	4-86
Loss Payable Clause	PP03 05	8-86
Extended Nonowned Coverage for Named Individual	PP03 06	6-94
Trailer Camper Body Coverage (Max Limit of Liability)	PP03 07	6/98
Coverage For Damage to Your Auto (Max Limit of Liability)	PP03 08	6-94
Single Limits Liability	PP03 09	6/98
Coverage for Electronic Media	PP03 13	6/98
Customizing Equipment	PP0318	6-98
Additional Insured-Lessor	PP0319	8-86
Snowmobile Endorsement	PP03 20	6-98
Limited Mexico Coverage	PP03 21	6-98
Named Non-Owner Coverage	PP03 22	6-98
Miscellaneous Vehicle	PP03 23	6-98
Misc Vehicle Amendment –Motor Homes	PP03 28	6-98
Certificate of Insurance-Trusts	PP03 33	6-98
Joint Ownership coverage	PP03 34	6-98
Auto Loan/Lease Coverage	PP03 35	9-93
Mexican Coverage-CO	PP03 57	6-98CO
Single Uninsured Motorists Limits	PP04 01	6-98
Uninsured Motorists Coverage-CO	PP04 25	7-02
Property Damage Uninsured Motorists Coverage-CO	PP04 37	4-99CO
PIP Coverage CO	PP05 61	12-01CO
Coverage For Damage to Your Auto Exclusion	PP13 01	12-99
All Purpose Endorsement	100155	6-90
Schedule of Autos	100374	1-85
Driver Exclusion CO	100701	1-96 CO
Addition Interest-Part A Liability Coverage	101254	5-95
Coverage for damage to your auto-Agreed value(Antique)	102075	4-91
PPO Amendatory Endorsement	102080	1-99 CO
CO PIP Ned Expense Selection Form	10289	6-92 CO
Colorado Summary Disclosure Form	102100	4-00 CO
PIP Coverage Offer, CO	102101	1-99 CO
Prestige Auto Coverage Endorsement	1021173	6-00

Personal Auto Cov Enhancements	102192	5-00
Manuscript Endorsement	180009	6-65
Good Student Certification	300213	6-70
Medical Statement	300319	6-75
Automobile Mechanical Report	300446	7-75
Notice of Premium Due	300614	9-76
Renewal Business Cover Letter	301057	5-90
New Business Cover Letter	301067	5-90
New Business Signature Page	301097	3-89
Notice Premium Discounts-Colorado	302396	4-00
CO UM and UMPD Coverage Offer(Split Limits)	302565	9-98-CO
CO UM and UPD Coverage Offer (Single Limits)	302566	9-98 CO
Annual Auto PHM	302598	7-98
New Business Cover Letter Prestige Auto	302612	9-99
Renewal Business Cover Letter-Prestige Auto	302613	9-99
Company Conversion Message to Policyholders	302642	1-01
Towing and Labor Provider—Prestige Auto	302646	3-02
Roadside Assistance ID Cards	302647	3-02
PHM-Elimination of Agreed Value Coverage	302651	6-02
PHM-Coverage of Damage to your Auto Exclusion	302652	6-02
PHM-Colorado (Fraud Warning)	335671	6-01
Adverse Action Notification-Cancellation	385093A	10-97
Adverse Action Notification-Non-Renewal	385093E	10-97
Adverse Action Notification- Declination	385093Q	10-97
Adverse Action Notification-Premium Increased	385093R	10-97
Information Gathering Practices	385759	1-00
Notice of Reinstatement of Insurance	485647Y	2-01
Notice of Termination-Additional Interest	485731U	6-92
Notice of Cancellation of Insurance-Nonpayment Direct Bill	458650B	2-91
Notice of Cancellation of Insurance – Nonpayment Agency Bill	485650D	2-91
Notice of Cancellation of Insurance	485656A	2-02 CO
Notice of Nonrenewal of Insurance	485656E	2-02 CO
Notice of Premium Increase with Driver Exclusion Offer	485561I	2-02 CO

Notice of Cancellation of Insurance with Driver Exclusion Offer	485656M	2-02 CO
Notice of Nonrenewal of Insurance with Driver Exclusion Offer	485656N	2-02CO
Notice of Coverage Reduction with Driver Exclusion Offer	485656O	2-02 CO
Notice of Coverage Reduction	485656Q	2-20 CO
Notice of Premium Increase	484656R	2-02 CO
Claims 888 Number	60045	10-96
Notice of Cancellation-Non Payment of Premium	ALL644	11-96
FFIC Privacy Statement	PRVCY	4-01
Notice of Reinstatement-Payment Received	RECND	11-96

In Force Business /Cancellations/Nonrenewals/Surcharges

For the period under examination the examiners systematically selected the following underwriting samples to determine compliance with Colorado Insurance law.

Private Passenger Auto

Review Lists	Population	Sample Size	Percentage to Population
In Force Business	1315	50	4%
Non-renewals	32	32	100%
Cancel Non Pay	10	10	100%
Surcharges	264	50	19%
Tort Conversions-Mid Term	212	50	24%
Tort Conversions-Renewals	825	50	6%

Homeowners

Review Lists	Population	Sample Size	Percentage to Population
In Force Business	104	50	48%
Non-renewals	32	32	100%
Cancel Non Pay	16	16	100%

Rating

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of inforce policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

Claims

The examiners reviewed the company's claims handling procedures and the timeliness and accuracy of PIP payments.

Private Passenger Auto

Review Lists	Population	Sample	Percent to Population
Closed without payment	67	50	75%
PIP Paid Claims	42	42	100%
All Other Paid Claims	568	50	9%

Homeowners

Review Lists	Population	Sample	Percent to Population
Paid Claims	153	50	33%
CWP	19	19	100%

EXAMINATION REPORT SUMMARY

The examination resulted in eight (8) issues arising from the Company's apparent failure to comply with Colorado statutes and regulations that govern all property and casualty insurers operating in Colorado. These issues involved three (3) of the four (4) categories of Company operations examined as follows:

Company Operations and Management: In the area of company operations and management two (2) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be followed by the Company in the issuance, cancellation, and non-renewal of policies of insurance. It is recommended that the Company review operating and management practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations. The issues in this area are:

- Certification and use of some non-complying forms.
- Failure to maintain records required for Market Conduct purposes.

Complaint Handling: In the area of complaint handling no compliance issues are addressed in this report.

Underwriting and Rating: In the area of underwriting and rating five (5) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be complied with whenever policies are canceled, non-renewed, premiums increased or decreased, or surcharged. It is recommended that the Company review its underwriting and rating practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations as to each issue.

- Failure, in some cases, to send notice of premium increase letters when policies were subject to a surcharge.
- Failure, in some cases, to provide a clear and specific reason for non-renewal of a private passenger auto policy.
- Failure to use a complying notice when converting policies from No-Fault to Tort.
- Failure to send required notice of change when renewing policies from No-Fault to Tort.
- Failure, in some cases, to offer a named driver exclusion.

Claims Handling: In the area of claims handling one (1) compliance issue is addressed in this report.

- Failure, in some cases, to timely pay PIP benefits.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance. Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

FIREMAN'S FUND INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS
OPERATIONS AND MANAGEMENT

Issue A: Certification and use of some non-complying forms.

Section 10-3-1104(1)(u), C.R.S., describes an unfair business practice as:

Certifying pursuant to section 10-4-725, C.R.S., or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109, C.R.S.

Colorado Insurance Regulation 5-1-2, Application and Binder Forms, promulgated pursuant to 10-1-109 and 10-3-1110, provides, in part: . . .

5. Rules

A producer shall clearly disclose the name of the insurance company on all applications, binders, and similar forms that will be used to insure the risk prior to the time the policy reaches the applicant.

Homeowner Policy Applications

Population	Sample Size	Number of Exceptions	Percentage to Sample
104	50	8	16%

An examination of fifty (50) homeowner policy applications, representing 48% of all policies written by the Company in Colorado from January 1, 2003 through December 31, 2003, showed eight (8) exceptions (16%) of the sample in which the Company failed to disclose the name of the company on the application.

Private Passenger Auto Policy Applications

Population	Sample Size	Number of Exceptions	Percentage to Sample
1315	50	5	10%

An examination of fifty (50) private passenger auto policy applications, representing 4% of all policies written by the Company in Colorado from January 1, 2003 through December 31, 2003, showed five (5) exceptions (10%) of the sample in which the Company failed to disclose the name of the company on the application.

Failure to disclose the name of the company on the application may be a violation of Colorado Insurance law.

Recommendation #1:

Within thirty (30) days, the Company should demonstrate why it should not be considered to be in violation of Sections 10-3-1104, C.R.S. and Colorado Insurance regulation 5-1-2. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to ensure future compliance with Colorado Insurance law when issuing policies.

Issue B: Failure to maintain records required for Market Conduct purposes.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109(1), C.R.S. states, in part: . . .

Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

Section 5. Policy Records

- A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. ...
- B. (4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy.

Section 9. Format of Records . . .

- C. The maintenance of records in a computer-based format shall be archival in nature, so as to preclude the alteration of the record after the initial transfer to a computer format. Upon request of an examiner, all records shall be capable of duplication to a hard copy that is as legible as the original document. The records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available to the commissioner's market conduct examiners in accordance with section 12.

PPA Policies Renewed July 1, 2003-December 31, 2003

Population	Sample Size	Number of Exceptions	Percentage to Sample
825	50	50	100%

An examination of fifty (50) policies renewed from July 1, 2003 through December 31, 2003, representing 6% of all policies renewed by the Company in Colorado after July 1, 2003, showed fifty (50) exceptions (100% of the sample) in which the company failed to retain letters sent to policyholders transitioning from PIP to Tort policies at renewal.

PPA Policies Cancelled for Non-Payment

Population	Sample Size	Number of Exceptions	Percentage to Sample
10	10	10	100%

An examination of 10 policies cancelled for non-payment, representing 100% of all policies cancelled for non-payment by the Company in Colorado during the examination period, showed ten (10) exceptions (100% of the sample) in which the company failed to retain cancellation notices sent to policyholders

Failure to maintain copies of cancellation notices sent to policyholders when canceling policies for non-payment may be a violation of Colorado Insurance law.

PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
42	42	2	5%

An examination of 42 PIP claims paid representing 100% of all PIP claims paid by the Company in Colorado during the examination period, showed two (2) exceptions (5% of the sample) in which the company failed to retain medical bills.

Failure to maintain records required for market conduct purposes may be a violation of Colorado Insurance law.

Recommendation #2:

Within thirty (30) days, the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 1-1-7. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to assure future compliance with Colorado Insurance law.

PERTINENT FACTUAL FINDINGS

UNDERWRITING AND RATING

Issue C: Failure, in some cases, to send notice of premium increase letters when policies were subject to a surcharge.

Section 10-4-720, C.R.S., Cancellation – nonrenewal – reclassification states, in part:

(1) Except in accordance with the provisions of this part 7, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Section 10-4-629 C.R.S., Cancellation – nonrenewal – reclassification, effective July 1, 2003, states, in part:

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Policies Surcharged

Population	Sample Size	Number of Exceptions	Percentage to Sample
267	50	5	10%

An examination of fifty (50) policies, representing 19% of all policies surcharged by the Company at renewal in Colorado from January 1, 2003 through December 31, 2003, showed five (5) exceptions, or 10% of the sample in which the Company failed to send a notice of premium increase to the named insured.

Failure to send a notice of increase of premium when surcharging policies may be a violation of Colorado Insurance law.

Recommendation #3:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-720 and 10-4-629, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to ensure future compliance with Colorado Insurance law when surcharging policies.

Issue D: Failure, in some cases, to provide a clear and specific reason for non-renewal of a private passenger auto policy.

Sections 10-4-720, C.R.S., effective 1963 and 10-4-629, C.R.S., effective July 1, 2004, provide the following restrictions regarding the non-renewal of private passenger automobile policies in Colorado:

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and *shall state in clear and specific terms*, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

... (c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

Section 10-4-629 C.R.S., Cancellation – nonrenewal – reclassification, effective July 1, 2003, states, in part:

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Amended Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules And Regulations, promulgated by the Commissioner of Insurance under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part: ...

E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720 (2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. *The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action.* A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ , 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S.states, in part: ...

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the policyholder. The statement of reasons shall be clear and specific so that a reasonable person can understand it. . . .

Policies Non-Renewed

Population	Sample Size	Number of Exceptions	Percentage to Sample
32	32	2	6%

An examination of thirty-two (32) non-renewals, representing 100% of all policies non-renewed by the Company in Colorado during 2003, showed two (2) exceptions (6% of the sample) in which the company failed to provide a clear and specific reason for non-renewal.

Failure to provide a clear and specific reason for non-renewal in the notice to the insured may be a violation of Colorado Insurance law.

Recommendation #4:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-720, 10-4-629, C.R.S. and Colorado Insurance Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to assure future compliance with Colorado Insurance law when non-renewing policies.

Issue E: Failure to use a complying notice when converting policies from No-Fault to Tort.

Colorado Insurance Regulation 5-2-11, Transition From No-Fault Auto to Tort System, promulgated pursuant to Sections 10-1-109 and 10-4-601.5, effective July 1, 2003, provides, in part:

Section 5 Rules

M. Except as provided in section 5(N), on *or before the tenth (10th) calendar day before the effective date of the change* to the policy where the insurer is first converting a no-fault policy to a tort policy, the insurer shall send by first-class mail written notice of the change to the named insured at the insured's last known address. The notice shall state in clear and specific terms all of the following: . . .

1. The proposed action to be taken, including , if the change is a change in premium or change in coverage, the amount of the premium, the type of coverage to which the premium change is applicable, the type of coverage increased or reduced, and the extent of the change in coverage.

a. In the notice, insurers shall make reasonable efforts to express the amount of any premium change as a dollar amount allocated among the various coverages.

b. If an insurer is unable to comply with section 5(M)(1)(a) within the required time frame, the insurer shall include in the notice a statement that the allocation of the premiums for the various coverages will be identified no later than when the policy is issued. In addition, the insurer shall be prepared to justify the failure to the division to the satisfaction of the divisions.

c. In no event shall a policy be issued that does not clearly differentiate the premiums for the various coverages.

The only mention of premium change in the notification letter sent with renewal policies is an approximate total amount of premium change.

The Company's notification letter may be in violation of Colorado Insurance law due to the following:

It fails to describe the type of coverage to which the premium change is applicable

It fails to describe the type of coverage increased or reduced

It fails to describe the extent of change in coverage

It fails to express the amount of premium change as a dollar amount allocated among the various coverages

It fails to clearly differentiate the premiums for the various coverages

Recommendation #5:

Within thirty (30) days, the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 5-2-11.

Issue F: Failure to send required notice of change when renewing policies from No-Fault to Tort.

Colorado Insurance Regulation 5-2-11, Transition From No-Fault Auto to Tort System, promulgated pursuant to Sections 10-1-109 and 10-4-601.5, effective July 1, 2003, provides, in part:

Section 5 Rules

M. Except as provided in section 5(N), on *or before the tenth (10th) calendar day before the effective date of the change* (italics added) to the policy where the insurer is first converting a no-fault policy to a tort policy, the insurer shall send by first-class mail written notice of the change to the named insured at the insured's last known address.

The notice shall state in clear and specific terms all of the following: . . .

PPA Policies Renewed July, August & Sept 2003 and June 2004

Population	Sample Size	Number of Exceptions	Percentage to Sample
377	377	377	100%

The Company failed to send notification letters as required by Colorado Insurance law for policies renewed in July, August, and September up to and including September 20, 2003 and June 20 through June 30, 2004.

Failure to send a notification letter where the insurer is first converting a no-fault policy to a tort policy may be a violation of Colorado Insurance law.

Recommendation #6:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 5-2-11.

Issue G: Failure, in some cases, to offer a named driver exclusion.

Section 10-4-719.7(1.5)(b)(I) through (III), C.R.S., states:

(b)(I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

Section 10-4-721(1), C.R.S., states:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, non-renewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or non-renewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

Section 10-4-628, C.R.S., effective July 1, 2003, Refusal to write-changes in-cancellation-nonrenewal of policies prohibited, states, in part:

(b)(I) An insurer shall not refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-629 if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include as part of such renewal a written notice naming the party specifically excluded from coverage.

The company's underwriting manual page, Colorado (10/02) states: . . .

NEW BUSINESS

Vehicles shall be assigned to appropriate tiers based on all criteria for that tier.

With respect to household occurrence activity:

Risks must be submitted unbound in Tier S when total household occurrence activity:

1. exceeds 3 minor convictions or
2. exceeds 2 minor convictions and 1 at-fault accident or
3. the total at-fault accidents exceed 1

With respect to operator occurrence activity: . . .

RENEWALS. . .

4. The new business household occurrence maximum may increase by one minor conviction of one at-fault accident.

The use of occurrences per household to non-renew policies of insurance rather than offering a named driver exclusion appears to be a violation of Colorado insurance law.

Recommendation #7:

Within thirty (30) days, the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-721, 10-4-719.7 and 10-4-628, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to ensure future compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS

Issue H: Failure, in some cases, to timely pay PIP benefits

Section 10-4-708 (1), C.R.S., Prompt payment of direct benefits, states:

Payment of benefits under the coverages enumerated in section 10-4-706 (1)(b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

Colorado Insurance Regulation 5-2-8, Timely payment of Personal Injury Protection benefits, promulgated by the Commissioner of Insurance under the authority of Sections 10-1-109, 10-4-704, 10-4-708(1.3) and 10-3-1110(1), C.R.S., effective November 1, 1997, amended September 1, 2000, provides, in part:

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in Section 10-4-706, C.R.S., are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 days after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period.

PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
42	42	13	31%

An examination of forty-two (42) paid claims, representing 100% of all PIP claims paid by the Company in Colorado during 2003, showed thirteen (13) exceptions (31% of the sample) in which at least one bill was not paid within the 30 day statutory standard.

Recommendation #8:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-708, C.R.S. and Colorado Insurance Regulation 5-2-8. If the Company is unable to provide such documentation, it should be required to provide documentation demonstrating that it has reviewed all procedures related to the timeliness of claims handling and the documentation of claim files and has implemented necessary changes to ensure compliance with Colorado insurance law.

**Market Conduct Examination
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